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ABORTION LAWS IN INDIA A CRITIQUE VIS–À–VIS COUNTER STATUS IN USA

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ABSTRACT

Alabama's anti–abortion law went into effect in May, 2019 and virtually outlawed all abortions in the State. Concerning the country's abortion laws, states in United States are moving toward the conservative ideology. The law in Alabama is regarded as the most stringent and rigid prohibition on abortion in history because it does not allow for rape or incest exclusions. The choice of a woman to have children or not is utterly disregarded. However, based on the landmark Roe v. Wade decision, this statute contravenes American federal law. This essay addresses which law will be applied and why, the reasons why the two laws will be broken, and the possible motivations behind passing such a severe legislation. In addition, it proposes a few modifications to the existing legal framework that must be made. In addition, a brief description and description of how the abortion law in India is implemented are provided. The major abortion case laws in India as well as the Indian Constitution's stance on these laws are discussed. In the case of "Justice K.S. Puttaswamy v. Union of India", this law is against federal law in the United States. This article discusses which law will be used and why, the rationales for breaking the two laws, and potential justifications for enacting such harsh legislation.by talking about how advances in medicine and changes in society now necessitate changing the law."

1. Introduction

Every woman in the United States attained her goal of living in the "land of the free" on January 22, 1973, when the Supreme Court issued its eagerly anticipated ruling in "**Roe v. Wade**," which was followed by "**Doe v. Bolton**.".[1]

The verdicts meant that women in America couldn't have been denied abortion before foetal viability. The Court sided with a contention that valued the reproductive decision of a woman over the preservation of "life," which includes unborn life.[2] As a result, any violation of such right by the government should be subject to rigorous judicial review.[3]

The "strict scrutiny test" is applied by American courts when one of the fundamental constitutional rights, notably those included is violated in the Bill of Rights or those deemed essential by the Supreme Court. To meet this test, the tested demonstration should be "essential" or "barely

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customized" to serve a "convincing" government purpose. Otherwise, it is unconstitutional. But given that these choices did not come about suddenly, it is important to comprehend the context, which will be examined further below.

2. Indian Scenario

Abortion is governed by the "Medical Termination of Pregnancy Act, 1971" in India. It gives "the clinical experts wide carefulness for concluding whether an early termination is legitimate. Such choices are made under expansive support of wellbeing or philanthropic reasons. Pregnancy termination grounds are provided by this eight-section Act. However, just like in the United States, this legal position also has a history in India.

"Area 312 of the Indian Corrective Code" and the "Code of Criminal Technique, 1973" made it against the law to "initiate a fetus removal" Except if there was a quick danger to the lady's life. This provision first appeared in the British Offences Against Person Act of 1861. In view of this regulation, more ladies in India can get early terminations without risk. Along these lines, the "Clinical End of Pregnancy Act (MTP Act)", which was taken on by Parliament, eliminates all limitations on early termination in specific conditions:

i) "They are performed for one of the several specified reasons;
ii) Within a limited period;
iii) After conception by a specially designated specialist and under prescribed conditions."[4]

Section 310 of the Act outlines the two reasons for terminating a pregnancy:

i) "The pregnancy would involve a risk to the pregnant woman's life or grave injury to her physical or mental health if it continued;" or then again.
ii) There is a significant gamble that on the off chance that the youngster was conceived, it would experience the ill effects of such physical or mental irregularities to be truly impaired."

This rule is groundbreaking since it operates under the assumption that the mental health of an expectant mother has been seriously compromised as a result of the trauma she has endured as a result of having been raped. Only an accredited physician is capable of performing an abortion, and only if the pregnancy is less than 12 weeks along and one doctor certifies the application on the grounds stated above, or 20 weeks along and two doctors certify the application on the grounds stated above.

For the Act's objectives, "registered medical practitioner" means "medical practitioner whose name is on a State Medical Register and they have the experience or training in gynecology and obstetrics that the rules made under this Act may require." The definition in "Section 2(h) of the Indian Medical Council Act of 1956" is comparable to this one.

Since then, Indian courts have upheld this legal position. The most significant instance is "*Justice **K.S. Puttaswamy v. Union of India**"*,[5] the court's ruling in ***Suchita Srivastava v. Chandigarh Administration***, which it upheld[6] This legal position has been upheld by Indian Courts ever since:

"*The Indian Constitution's definition of "personal liberty" includes, without a doubt, a woman's right to choose her own reproductive options. Recognizing that reproductive choices can be made to have children or not have children is essential. Respect for a woman's right to privacy, dignity, and bodily integrity is the most important consideration. This means that a woman's right to choose whether or not to engage in sexual activity or whether or not to use contraceptives should not be restricted in any way. Besides, ladies are additionally allowed to pick contraception strategies, for example, going through sanitization techniques. Reproductive rights, taken to their logical conclusion, include a woman's right to carry a pregnancy to full term, give birth, and then raise children. Nonetheless, on account of pregnant ladies there is likewise a 'convincing state revenue' in safeguarding the existence of the forthcoming kid. In this manner, the end of a pregnancy is possibly allowed when the circumstances determined in the relevant resolution have been satisfied."*

A civil appeal that sought to demonstrate the husband's consent to an abortion and declared that abortion is a woman's right was dismissed by the Supreme Court in another recent decision. The choice of the Punjab and Haryana High Court was maintained by the High Court., which determined that "the husband cannot compel her to conceive and deliver his child." Consenting to her husband's conjugal rights does not imply consent to have a child. It is decided that the Act does not require the husband's explicit or implied consent to end the pregnancy. The High Court likewise decided that an accidental pregnancy would be terrible for a lady's psychological well-being: "The woman is not a machine that takes in raw materials and produces a finished product. She ought to be mentally prepared for childbirth.

Regardless of the "Medical Termination of Pregnancy Act, 1971" states that a foetus can be aborted at any time up to a maximum of 20 weeks, the Indian Courts have allowed abortions to be performed earlier or later when the foetus would have serious health issues if born. Because "*it would be risky for The Himachal Pradesh High Court granted an abortion on a 32-week-old foetus in order for the 19-year-old girl with mild to moderate mental retardation to complete the normal pregnancy period and deliver the child on time. The Bombay High Court conceded "a substitute mother consent to cut short her 24-week-old baby in one more late choice on the grounds that the hatchling was supposed to require numerous medical procedures whenever conceived. It was to be finished with the endorsement of the expected guardians. The Delhi High Court recently granted permission for an abortion on a foetus that was 22 weeks old due to the distress the 16-year-old rape survivor was experiencing and the risks the unwanted pregnancy posed to the petitioner's well-being.*

2.1. Need to Amend the Draconian Law

The Madhya Pradesh High Court recently was in news when it followed the rules and denied an abortion request from a victim of a rape at age 12 who was more than 20 weeks pregnant along in her pregnancy. The Supreme Court ruled against a young woman, aged twenty years, who was

interested in terminating her pregnancy at 25 weeks, saying that doing so would be murder. Cases like the one decided by the Calcutta High Court are represented by these examples.

2.1.1. Restrictive nature of the Act

Instead of protecting the freedom of women in matters of reproduction, the Act provides narrow exceptions for putting an end to a pregnancy. The Supreme Court rejected a twenty-year-old woman's plea to end her pregnancy after the first twenty-five weeks, ruling that her claimed justifications were not covered by the Medical Termination of Pregnancy Act and the belief that murder is the same as having an abortion. The petitioner claimed that she had filed for divorce and was the victim of spousal abuse, which she used to justify the abortion. In order to accommodate abortion on demand, which is compatible with a woman's right to control her own reproductive system, the Act must be amended in this area. Women should have the freedom to make their own decisions whether or not they intend having children, how many children they want, when they want to have them, and with whom, and they should be free to use whatever means and methods they see fit to carry out these decisions. It is unclear whether men too face a comparable limit on their reproductive freedom.

2.1.2. Disregard for the Reproductive Autonomy Guaranteed under Article 21

In ***Suchita Srivastava v. Chandigarh Administration***, the Supreme Court decided that a woman's right to "personal liberty" under Article 21 included her right to sexual freedom. The thought was upheld by one more episode in which the court conceded a lady's solicitation to end her 24-week pregnancy attributable to a wellbeing concern. The woman reserved an option to secure and save her life, and the court confirmed that practicing that right was well inside the boundaries of her regenerative independence. Under the Medical Termination of Pregnancy Act of 1971, a woman cannot technically choose to have an abortion. All things being equal, the specialist goes with the choice for the patient's sake in light of the clinical supports recorded in Area 3. Moreover, just the reasons determined in the Clinical End of Pregnancy Act might be used by a woman to end her pregnancy.

2.1.3. Increase in Duration

The criterion established by is that the window for abortion should be extended from 20 to 24 weeks at least in *Roe*.[7] Additionally, "*there a provision must be included to allow abortions in exceptional circumstances beyond 24 weeks and when the mother's life is not in danger. The government also intends to raise this limit, but only if there is a significant threat to the mother's health. According to the right to privacy, reproductive choices are a part of a woman's decisional autonomy. Therefore, a woman should have the right to choose whether or not to have an abortion.*

Concurring the arrangements of the MTP Act, ladies are denied of ending Except if her life is in harm's way or there are further clinical reasons, the kid will be given upon request, albeit the state can place reasonable limits on this. Restricting abortion access to only these two reasons is absurd. Other valid reasons include financial hardship, undesired pregnancies due to rape or incest, and so

on. This option must be made available to women, and the MTP Act's provisions must be changed to reflect this.

2.1.4. Safeguards for Single Women

A woman who is sexually engaged but not married cannot seek an abortion under the MTP Act if she becomes pregnant and has no plans to keep the baby. This shift, suggested in 2016 by the "Ministry of Health and Family Welfare", has not yet been implemented. If legalized, any woman, married or single, who is unable to prevent pregnancy through other means may have an abortion. In vicem, the legislation should be changed so that all women, regardless of their marital status, have equal access to decision-making power.

3. USA Scenario

In terms of abortion, state regulations in the United States, which must be consistent with federal law, range from extremely stringent to extremely permissive. Nine states in the United States have recently passed draconian abortion regulations. The state of Alabama has approved the harshest law, which will be described in detail in the next section. Mississippi's governor has approved legislation prohibiting when a foetal heartbeat is discernible, abortion is performed. The legislation grants an exemption if a woman's life or one of her vital bodily functions are in risk during pregnancy, but it makes no provision for rape or incest. Additionally, it stipulates that a doctor may have their state medical licence withdrawn if they perform an abortion after hearing the heartbeat of the foetus. 'Foetal Heartbeat' bills are what these pieces of legislation are called. Georgia and Louisiana have both signed laws of a similar nature. Georgia's proposal said that a child's complete value begins when a detectable human pulse is detected, including with alimony, child support, and income tax deductions for foetuses is present.

Utah's latest measure is an extreme example of outspoken hostility to abortion. The Utah legislation states that the choice to reject abortion is for the woman and her physician, as well as various consent requirements, such as those of the father of the unborn child. Another condition required that the decision to have an abortion be made only after a judicial hearing, at which interested parties—the father, the foetus's paternal grandparents, the mother's parents (if she was not married), and the county attorney—could express their opinions. The court decided in "Doe v. Rampton" that many of the strict act provisions were invalid, and many of them are still in effect.

Conversely, liberal early termination regulations are set up in many states, including California, Nevada, and Florida. The Regenerative Wellbeing Act, 2019, was passed by the New York State Gathering in January 2019. This law allows a medical professional who is authorized, guaranteed, or approved under section eight of the education regulation to direct fetus removals while working within the fetus's actual range of motion. It enables ladies to pick the best medical care choice in light of their ailments and perceives fetus removal as a type of regenerative medical services. After 24 weeks, it makes abortions legal if the mother's life is in danger or the unborn child is

unviable, decriminalizes abortion, and places it in the realm of public health. Subsequently, it has one of the most tolerant early termination regulations. Virginia is another state that falls into this category. Virginia recently got rid of restrictions on abortions like the 24-hour waiting period and the requirement that women in their second trimester get them in a hospital. Also, the law was changed by the measure. Before, people who wanted an abortion had to have three doctors look at their pregnancy to make sure it wasn't life-threatening before it could be done.

3.1. Alabama: An Autonomy or State Interest

On May 14th, 2019, lawmakers in Republican-controlled Alabama enacted a bill that effectively outlaws abortion. After a fortnight, anti-abortion legislation was also approved in the state of Louisiana in response to this tragedy. Alabama, Georgia, Kentucky, Louisiana, Mississippi, Ohio, and Missouri are the seven states that have outright prohibited abortions after the first trimester. Alabama's prohibition is the most rigid and illiberal of these. In 1975, the state passed a law criminalizing abortion, notwithstanding the protections guaranteed by Roe v. Wade. According to Section 13A of the Alabama Code of 1975:

"Any individual who willfully directs to any pregnant lady any medication or substance or uses or utilizes any instrument or different means to prompt a fetus removal, unnatural birth cycle or unexpected labor or helps, abets or recommends for something very similar, except if the equivalent is important to protect her life or wellbeing and accomplished for that reason, will on conviction be fined at least $100.00 nor more than $1,000.00 and may likewise be detained in the area prison or condemned to really difficult work for the province for not over a year."

This clause is based on the same law that, in the event of a homicide, considers an unborn child to be a person regardless of whether or not they are viable. This has been the state's situation, and the being referred to piece of regulation, the Alabama Human Existence Insurance Demonstration of 2019, was sanctioned to help that position and question Roe's lawfulness. The Roe decision had two parts, as was mentioned earlier: The trimester test and the lady's on the right track to have a fetus removal are two models. This is governed by federal law in the United States, and all other state laws must follow the broader concepts of Roe; Due to the supremacy clause, this must be done. The 2019 Alabama Human Life Protection Act directly contravenes the Roe standards. In ***Gonzales v. Carhart***, the Supreme Court ruled 5:4 that Congress was fully within its right to "generally" restrict abortion, despite the fact that this legislation diverged in 2007.

However, this decision did not invalidate Roe or any other decision that came after Roe. The autonomy argument can be used to challenge the Gonzales verdict; the 10th and Fourteenth Changes, when perused together, award a lady the right to protection concerning foetus removal.

Furthermore, when Section 1 and Section 3[8] of the Alabama Human Life Protection Act, 2019 are read together, the trimester test is completely ignored, since the Alabama Human Life Protection Act, 2019 prohibits abortion beginning in the first week Therefore, Alabama's ban on abortion has no

future and will be overturned.

4. Conclusion

"*Roe v. Wade*[8] *was not the start of fetus removals for ladies, it was the finish of lady kicking the bucket from early terminations.*"

—Jan Schakowsky

The federal legislation in the United States strikes an excellent balance; it connects the dots between rights denied and goals pursued, as required by the concept of proportionality. Without departing from the spirit of the federal statute, each state should apply this rule of law mutatis mutandis. Roe v. Wade's precedent can be adopted by the state's ipso facto. There is a rising trend for states to implement excessive limitations that run counter to federal law. The courts have the responsibility of determining the scope of an individual's rights, weighing those rights against State goals, and selecting the most socially beneficial solution. When compared to other countries' abortion regulations, Alabama's is among the strictest. Laws that go against established legal principles ought to be criticized and declared null and void, and new laws ought to be enacted in their place. A violation of a woman's right to privacy and autonomy during the first three months of her pregnancy would be infringing on her right to control her own body.

The Medical Abortion and Reproductive Health Act is a positive development in Indian legislation. When placed in the context of Indian culture, the law ex tempore really predated Indian culture. However, as medicine progresses, the law must also evolve. The legislation should allow even single women to engage in sexual activity, so long as reproductive autonomy is recognized. The deep-seated sexism in Indian society is on full display when a woman, whether unmarried or married, is denied the right to terminate her pregnancy.

Endnotes

[1] [1973] 410 US 179.
[2] *Roe v. Wade* [1973] 410 US 113.
[3] *United States v. Carolene Products Company* [1944] 323 US 18, 21.
[4] Thomas John M. [October–December 1974], *Indian Abortion Law Revision and Population Policy: An Overview*, Vol. 16, No. 4, Journal of the Indian Law Institute, at pp. 513–534.
[5] Writ Petition [Civil] No. 494 of 2017.
[6] Civil Appeal No. 5845 of 2009.
[7] *Roe v. Wade* [1973] 410 US 113.
[8] [1973] 410 US 113.

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